

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)
)
)
v.)
)
)
ELLIS GALYON)
)
)
Defendant.)
)

Criminal No. 1:16-CR-247-WSD

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through its undersigned attorney, respectfully submits this memorandum in aid of the sentencing of the Defendant, Ellis Galyon. The Court is scheduled to sentence the Defendant on October 19, 2016. On August 11, 2016, the Defendant pleaded guilty to his role in multi-year conspiracies to rig bids and to commit mail fraud in the Fulton County foreclosure auction market. By corrupting these auctions, the Defendant cheated banks and homeowners out of foreclosure sale proceeds that otherwise would have been paid to them had the auctions been competitive.

The government recommends that the Court impose a term of imprisonment of 6 months followed by a term of supervised release, and

that the Defendant be ordered to pay both a criminal fine of no greater than \$20,000 and restitution of \$27,500. In its plea agreement with the Defendant, the United States agreed to seek a sentence of imprisonment of no longer than 6 months. Probation has calculated an offense level of 13, consistent with the parties' plea agreement, which results in an imprisonment range of 12 to 18 months. If the Court adopts Probation's Guidelines calculations and grants the government's 5K motion, the resulting offense level will be 10, resulting in an imprisonment range of 6 to 12 months.

This sentencing memorandum addresses: (1) the charged conduct and the Guidelines calculations and (2) the appropriateness of a meaningful term of incarceration under the 18 U.S.C. § 3553 factors.

The government reserves the right to provide additional briefing in response to any sentencing memorandum filed by the defendant.

I. THE CHARGED CONDUCT AND GUIDELINES CALCULATIONS

The defendant pleaded guilty to one count of bid rigging and one count of conspiracy to commit mail fraud in Fulton county. The defendant's participation in the bid rigging and fraud schemes in Fulton County spanned more than four years, from June 2007 until July 2011.

The recommended Guidelines Offense Level 13. The applicable Guidelines imprisonment range for Offense Level 13 is 12 to 18 months. As noted by the Presentence Report, the Guidelines fine range is \$20,000 to \$36,1610. See U.S.S.G. §5E1.2 (b) and (c)(3).

The government has filed under seal a separate motion pursuant to U.S.S.G. § 5K1.1 requesting a downward departure from Guidelines Offense Level in light of the Defendant's full, truthful, and continuing cooperation with the government and the substantial assistance defendant has provided to the government in its investigation and prosecution of others. The specifics of the Defendant's cooperation and the extent to which he substantially assisted the government are fully discussed in that motion.

Should the Court accept the government's recommendation of a 3-level downward departure, the Defendant's resulting advisory Guidelines Offense Level would be 10. For a Guidelines Offense Level of 10, the corresponding imprisonment range is 6 to 12 months. In its plea agreement with the defendant, the government agreed to seek a sentence of imprisonment no longer than 6 months.

II. THE 18 U.S.C. § 3553 FACTORS SUPPORT THE GOVERNMENT'S SENTENCING RECOMMENDATIONS

Under 18 U.S.C. § 3553, the Court must impose a sentence sufficient to,

among other things, promote respect for the law, achieve general and specific deterrence, and account for the nature and seriousness of the defendant's offenses. Financial crimes that defraud property holders and artificially depress real estate prices are serious, and negatively affect not just the immediate victims but also the community. Deterring other real estate speculators from corrupting the foreclosure auction process and enriching themselves through similar crimes requires a prison sentence.

The nature and characteristics of the Defendant further support imposition of a 6 month-prison sentence. The Defendant is an experienced real estate professional with a Bachelor's Degree in management from the University of Tennessee. Defendant is a sophisticated, educated businessman who has an intimate knowledge of the real estate investment industry and knew exactly what he was doing when he and his co-conspirators corrupted the foreclosure auction process and diverted money from property holders to themselves.

At the plea hearing, however, the Defendant continued to rationalize his behavior at the foreclosure auctions. During the plea hearing, the Defendant alleged that at the time he committed the offense, he did not understand that the money he was taking should have gone to the homeowners or the banks. Plea Tr. at 66-67 (docket number 10). Rather,

the defendant believed that after some period the money went to the State of Georgia. *Id.* The defendant therefore rationalized his illicit conduct with the false belief that it was proper to take money intended for the State of Georgia. That is equally, if not more, distressing to the United States.

The United States believes that the Defendant has now firmly accepted responsibility for his actions and the harm he and his co-conspirators caused to distressed homeowners and banks, but believes that a serious sentence of 6-months of imprisonment is especially important in this case in order to deter the Defendant from future financial improprieties.

In determining the appropriate sentence in this matter, the Court must also consider the sentences of other defendants with similar records who have been found guilty of similar conduct. Including the Defendant, twenty-two others have been charged in connection with the government's investigation into bid rigging and fraudulent schemes at foreclosure auctions in the Atlanta area. The Defendant is one of thirteen defendants to plead guilty in this Court to conduct involving Fulton and DeKalb counties. The government's recommendation of 6 months imprisonment followed by a term of supervised release is consistent with the Guidelines and the sentences imposed on the co-conspirators whose involvement in the illegal activity here most closely resembles the Defendant. Paul Chen, who

was also in Zone A with a Guidelines offense level of 8, was sentenced to 3 months imprisonment followed by 2 months community confinement and 1 month home confinement. Ira Eisenberg's recommended Guidelines offense level was 10 and he was sentenced to 4 months imprisonment followed by 3 months community confinement and then 3 months home confinement. However, the defendant began cooperating with the government's investigation much later than Chen or Eisenberg.

Based on the defendant's relative culpability compared to others, his sophistication and background, the loss caused as a direct result of his conduct, and the sentences already imposed by this honorable Court, the government respectfully recommends that 6 months of imprisonment is a fair and appropriate sentence in this matter.

Respectfully submitted this 12th day of October, 2016.

/s/ ASHLEY EICKHOF
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CERTIFICATE OF FONT AND POINT SELECTION

Pursuant to Local Rule 7.1D, I hereby certify that the foregoing “Government’s Sentencing Memorandum” has been prepared with one of the font and point selections approved by the Court in Local Rules 5.1B and 5.1C.

/s/ ASHLEY EICKHOF

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2016, I served a copy of the foregoing “Government’s Sentencing Memorandum” with the Clerk of Court using the CM/ECF system, which automatically will send e-mail notification of such filing to all attorneys of record.

/s/ ASHLEY EICKHOF

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